



Department of Property & Procurement

Government of the United States Virgin Islands

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December 18, 2015

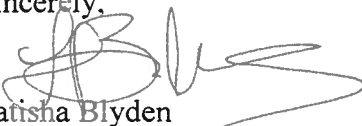
Mr. Reuben D. Molloy, MBA
Director
Bureau of Information Technology
8000 Nisky Center
Suite 600 A
St. Thomas, VI 00802

Dear Director Molloy:

Transmitted herewith for filing and distribution are two (2) executed Master Services Agreement **P017BITT16** between the Government of the Virgin Islands (Bureau of Information Technology) and **viNGN, Inc. d/b/a Virgin Islands Next Generation Network**.

An original has been retained for the files of this office.

Sincerely,



Latisha Blyden
Deputy Commissioner

LB/df

Encls:

MASTER SERVICES AGREEMENT

Between

viNGN, INC. DBA VIRGIN ISLANDS NEXT GENERATION
NETWORK

and

OFFICE OF THE GOVERNOR, BUREAU OF
INFORMATION TECHNOLOGY

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MASTER SERVICES AGREEMENT

This Master Services Agreement is entered into this 16th day of December 2015. ("Effective Date") by and between viNGN, Inc. dba Virgin Islands Next Generation Network, a United States Virgin Islands public corporation, (on behalf of itself and its Affiliates and hereinafter referred to as "viNGN"), whose principal place of business is at 2179 King Cross St., Christiansted, St. Croix, VI 00820 and the Office of the Governor, Bureau of Information Technology (hereinafter referred to as "Customer"). Customer and viNGN are individually referred to as "Party" and collectively referred to as "Parties."

IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, the Parties mutually agree as follows:

ARTICLE 1 - DEFINITIONS

The following terms shall have the following meanings for the purpose of this Agreement:

Access Service Request or ASR. "Access Service Request" or "ASR" shall mean the capacity order for Service submitted by the Customer which delineates the type of Service (as hereinafter defined), locations served, Points of Termination, the performance objectives of the Service, protocols, circuit term, requested Start of Service Date and other information specific to the applicable capacity order. An ASR that has been accepted by viNGN is referred to in this Agreement as a "Service Order."

Acceptance or Accepted. Customer will be deemed to have given its "Acceptance" or to have "Accepted" a Service (a) when the Customer delivers to viNGN a written and signed letter of Acceptance, submitted to viNGN via e-mail, and followed by fax, (b) upon completion of the applicable test and acceptance procedures described in the FOC, (c) five (5) days after the delivery of the Service by viNGN to Customer if the Customer does not deliver a written and signed notice of non-Acceptance, which must include the explanation and details of non-compliance, or (d) upon actual use of the Service by Customer, whichever occurs earlier.

Affiliate or Affiliated. "Affiliate" means and Affiliated refers to, any entity that controls, is controlled by or is under common control with a party.

Agreement. "Agreement" means this "Master Services Agreement, any exhibits and addenda and any Service Orders and Firm Order Confirmations, as those terms are defined herein. The term "Agreement" includes any exhibits, addenda, Service Orders and FOCs entered into contemporaneous with, and subsequent to, the Effective Date.

Applicable Law. "Applicable Law" means any applicable law and regulation, including, but not limited to, the Communications Act of 1934, as amended, the policies, rules and regulations of the FCC and the United States Virgin Islands, and all federal, state, territorial, and local laws and regulations.

AUP. "AUP" means viNGN's Authorized Use Policies which are currently in effect and may be modified by viNGN from time to time.

Business Day. "Business Day" shall mean any day except for Saturday, Sunday and United States federal holidays.

CAI. "CAI" shall mean Community Anchor Institution which includes all offices and locations of the Government of the Virgin Islands and semi-autonomous and independent instrumentalities.

Content. “Content” shall mean information or data made available, displayed or transmitted using a Service.

End-User. “End-User” shall mean a user to whom Customer or a customer of Customer will provide services utilizing, in whole or in part, the Services provided by viNGN to Customer under this Agreement.

FOC. “FOC” shall mean a written “Firm Order Confirmation” by which viNGN commits to provide the requested Service by a specified date including performance parameters and applicable testing and acceptance procedures.

MRC. “MRC” shall mean monthly recurring charges associated with each Service which shall be set forth in a Service Order and invoiced as described in Article 3.

NOC. “NOC” shall mean a viNGN Network Operations Center.

NRC. “NRC” shall mean one-time or event-based, non-recurring charges associated with any installation or turn up of each Service, post-implementation change orders on a Service. All NRCs applicable to installation and turn up of Service will be set forth in a Service Order and shall be invoiced as described in Article 3. All other NRCs shall be set forth in an appropriate change order.

Off-Net. “Off-Net” shall refer to circuits, network components or capacity provided by third-party suppliers or Services that terminate at or transit one or more premises which are not served by the On-Net portion of the viNGN Network. Service provided to an Off-Net location utilizes the On-Net and Off-Net portions of the viNGN Network.

On-Net. “On-Net” shall refer to circuits, network components or capacity provided by viNGN or Services to premises which are served by the On-Net portion of the viNGN Network (which may be provided by or through viNGN or a viNGN Affiliate identified in a Service Order). Service provided to an On-Net location utilizes solely the On-Net portion of the viNGN Network.

RFQ. “RFQ” shall mean a request for quotation submitted to viNGN by Customer as to the price, availability and other relevant terms and conditions under which Services are available from viNGN. An RFQ shall specify the Service requested, the locations to be served, the requested Start of Service Date, the Service Order Term, and other specific information required for viNGN to determine whether Service can be provided.

Scheduled Outage. “Scheduled Outage” shall mean any disruption or degradation of Service caused by scheduled maintenance or planned enhancements or upgrades to the viNGN Network.

Service. “Service” or “Services” shall mean viNGN-provided transport services or such services as agreed to by Customer and viNGN, as further described on a Service Order. Unless otherwise specified on a Service Order, all Services shall be provided on a non-common carrier, private contractual basis and shall not be considered telecommunications services.

Service Order. “Service Order” shall mean any ASR that viNGN accepts and for which viNGN issues a FOC as described in Article 3.

Service Order Term. “Service Order Term” shall mean one year beginning on the Start of Service Date unless otherwise specified in a Service Order, and shall include any renewal periods.

Service Outage. A “Service Outage” is a complete loss of connectivity or disruption of Service or a degradation of the Service materially below the performance parameters specified in the applicable FOC for a period of time of more than thirty (30) continuous minutes.

Start of Service Date. “Start of Service Date” for Service shall be the later of (i) the date requested by Customer for a circuit to be placed in service, as specified on the applicable ASR; or (ii) the date the installed Circuit is Accepted by Customer.

Term. “Term” shall mean the Initial Term and any Renewal Terms, as defined in Article 2 of this Agreement.

Underlying Rights. “Underlying Rights” shall mean the rights-of-way, access rights and other agreements obtained by viNGN or providers of network components that form part of the viNGN Network from third parties for the construction, operation and maintenance of the viNGN Network and/or facilities.

viNGN Network. “viNGN Network” shall mean a high-speed broadband communications network over which viNGN provides its Services and which includes certain network components owned by viNGN and certain network components owned by third parties not affiliated with viNGN as to which viNGN has the contractual rights necessary to provide its Services.

ARTICLE 2 - SCOPE AND TERM OF AGREEMENT

2.1 Scope of Agreement. This Master Services Agreement sets forth the general terms and conditions under which Customer may order and viNGN shall supply Services. The Services and associated pricing for the Services are listed on the applicable Service Order(s). Each Customer order shall be documented by an ASR and an FOC as described below. If for any reason viNGN, in its sole discretion, discontinues a Service on the list of available Services, viNGN shall continue to perform any then existing Service Orders for such Services according to their terms until the end of the committed term, but Customer shall not be entitled to submit additional ASRs for any discontinued Services.

2.2 Term. The Master Services Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with Article 8, shall continue for an “Initial Term” until the end one (1) year from the Effective Date. This Master Services Agreement shall be automatically extended for successive renewal terms of one (1) year each (a “Renewal Term”) unless either Party delivers written notice to the other Party one hundred twenty (120) days prior to the expiration of the Initial Term or any Renewal Term, of its intent not to renew this Master Services Agreement. Each Service Order shall contain a Service Order Term applicable to the provision of Services thereunder. In the event there is no renewal Service Order Term stated in the Service Order, the Service Order Term identified in the Service Order shall automatically be deemed renewed on the same conditions on a month-to-month term, unless either Party provides thirty (30) days’ advance written notification of nonrenewal to the other Party. In the event that the Initial Term or Renewal expires while Service is still being provided under any Service Order, the Term shall automatically be deemed extended only as to such Service Order for the term set forth in the FOC, but during such extension viNGN may, in its sole discretion, cease the processing of any pending RFQs or ASRs not the subject of an FOC, and Customer shall not be entitled to submit new RFQs or ASRs.

ARTICLE 3 - SERVICE ORDERS AND ACCEPTANCE OF SERVICE

3.1 Service Orders: To order a Service, Customer must have entered into this MSA executed by both Customer and viNGN. Customer must then submit to viNGN a signed RFQ. viNGN may accept or reject the RFQ and/or it can request clarification, additional details and/or changes. Customers are encouraged to discuss the contents of an intended RFQ with viNGN before submitting it. In the event that viNGN provides the quote(s) requested in the RFQ, Customer will then submit a signed ASR for the new Service. viNGN will either reject, accept or require any changes to the ASR needed for viNGN's agreement to provide the Service, and will inform the Customer accordingly. Upon receipt of an executed ASR that conforms to viNGN's response to the RFQ, if viNGN, in its sole discretion, determines to accept the ASR, viNGN will deliver to Customer an executed FOC for the requested Service. viNGN will become obligated to deliver any ordered Service only if viNGN has delivered an FOC for the particular Service.

3.2 Acceptance of Service: Billing for Services shall begin upon Acceptance of Services in accordance with the terms and conditions of the Agreement.

ARTICLE 4 - BILLING, TAXES AND OTHER FEES

4.1 Invoices. viNGN shall invoice Customer on a monthly basis. MRCs will be invoiced in advance and NRCs will be invoiced in arrears. The first invoice shall be sent following the Start of Service Date and shall include the pro-rata amount for the partial initial month and the full amount for the next month. Subsequent invoices shall be sent ten (10) days in advance of the month to which the invoice applies and shall be paid by Customer not later than thirty (30) days from the date of the invoice. The Parties will cooperate to enable viNGN to provide its billing information in a mutually agreeable billing format.

4.2 Remittance. Invoices for NRCs are due and payable within thirty (30) days after the date of the invoice. The initial invoice for MRCs for a Service is payable within thirty (30) days after the date of the invoice. Subsequent invoices for MRCs are payable not later than the first day of the month to which the invoice applies. When Service is initiated on other than the first day of the month or terminates on other than the last day of the month, the charge for that month shall be determined by prorating the monthly payment by the number of days during which Service was provided. Customer shall send payments to the remittance address indicated on the invoice. In the event that Customer fails to make payment of an invoice when due and payable and such failure shall continue for a ten (10) day grace period thereafter, viNGN may, in its sole discretion, terminate the Agreement or any part thereof without any further notice to Customer.

4.3 Late Payments. In the event Customer should fail to make any payment by the due date, Customer shall pay viNGN a late charge on all past due amounts at the compounded rate of one and one-half percent (1.5%) per month or the highest rate allowed by law (whichever is less).

4.4 No Setoff Rights. The amounts due to viNGN are due and payable without set off.

4.5 Disputed Invoices. Customer may reasonably dispute charges on an invoice and Customer shall notify viNGN of any such disputed charges in writing no later than sixty (60) days after date of the first invoice containing the disputed charges. Customer shall timely pay all amounts not in dispute. Any dispute notice shall set forth all details (including, without limitation, invoice reference, Service Order

reference, circuit date and circuit number) concerning the disputed charges and reasons for the dispute. viNGN and Customer shall attempt in good faith to resolve any objection to the invoiced amount prior to the payment due date or, if the due date has already passed, within ten (10) days of Customer's dispute notice. If the dispute cannot be resolved prior to the payment due date, Customer shall pay the invoiced amount minus the disputed amount on or before the due date of original invoice. If the dispute is subsequently resolved in favor of viNGN, Customer shall pay all amounts agreed or found to be owing to viNGN, including late charges at the rate specified in Article 4.3, within fifteen (15) days after the dispute is resolved. Upon resolution of a dispute in favor of viNGN, the late charge will be applied as of the original due date for the disputed payment. Payment of invoiced charges on a timely basis shall not prejudice Customer's right to dispute charges, provided the dispute is pursued in the manner and within the time specified in this Article. Any credits resulting from an invoice dispute will be reflected in a subsequent billing cycle. The Parties agree that any credits, reimbursements to or recovery by Customer or back billing or recovery by viNGN relating to disputed charges, overcharges, unbilled charges or other billing matters shall be limited to recovery or back billing for the six (6) month period prior to the date of the dispute. Credits or back billing for charges invoiced or incurred prior to this six (6) month period shall not be permitted.

4.6 Reserved.

4.7 Taxes and Assessments. Customer shall be responsible for any applicable foreign, federal, state, or local taxes and charges assessed in connection with the Service, including without limitation, all governmental excise, use, sales, value-added and occupational taxes and other fees and assessments (including universal service fund assessments, or similar amounts assessed in connection with the Services) or other similar surcharges and levies, but excluding any taxes based on viNGN's net income. Customer shall pay all such amounts directly to the taxing authority unless the taxing authority requires that viNGN collect and remit payment, in which event Customer shall pay these amounts to viNGN and viNGN shall remit them to the taxing authority. Customer and viNGN shall cooperate in taking reasonable actions necessary to minimize taxes, or to qualify for exemptions from taxes, duties or liabilities. Customer shall provide all information to viNGN of any exemption of sales, use or other tax claimed by Customer and shall promptly notify viNGN of any change in Customer's tax status. Customer must furnish to viNGN certifications that it is purchasing Services for resale prior to the implementation of Service.

4.8 User Fees and Permits. Customer shall be solely responsible for obtaining, on a timely basis, all necessary permits or consents from federal, state or local governments, if any, for use or resale by Customer of the Services. Customer shall pay, on a timely basis, all fees and assessments, if any, imposed or required by the local, state, or federal government upon or as a result of Customer's use of the Services. Customer shall complete in full and return to viNGN the Federal Universal Service Fund/Attestation Status Form, which form will be provided to Customer by viNGN. viNGN shall be solely responsible for obtaining all necessary permits or consents from federal, state or local governments, if any, for the provision by viNGN of the Services.

4.9 Indemnification against Taxes and Third Party Fees. Customer shall indemnify, defend and hold viNGN harmless against all taxes, fees, assessments or similar amounts, if any, as set forth in Sections 4.7 and 4.8 which may be assessed against Customer or viNGN relating to Customer's use (or Customer's customer use) of the Services. Customer shall further indemnify, defend and hold harmless viNGN against all claims or liability due to or arising out of failure of Customer or Customer's customer to (a) obtain, on a timely basis, any permit or other consent as may be required from any local government or other regulatory body for use of the Services; or (b) pay, on a timely basis, all fees and assessments, if

any, imposed or required by the local, state, or federal government upon or as a result of Customer's use (or Customer's customer use) of the Services.

ARTICLE 5 - USE OF SERVICES

5.1 Use of Services.

5.1.1 The operations by the Customer with respect to the use of the Services and any equipment associated therewith shall be such as not to (i) interrupt, interfere with, or impair service over any of the facilities comprising the viNGN Network, any circuits of viNGN, or any associated, Affiliated or connecting companies, or any Customer, nor (ii) impair the privacy of any communications over such facilities, cause damage to plant, or create hazards to the employees of any of the aforementioned companies or of any owner of the aforementioned facilities or to the public. The Customer shall bear the cost of any additional protective apparatus reasonably required to be installed because of the use of such facilities by the Customer, any Customer of Customer, or any End-User.

5.1.2 In the event a Service is being provided hereunder for the purpose of facilitating or enabling Customer to provide service to a Community Anchor Institution ("CAI") or any governmental entity, neither the Service nor any equipment or facilities provided therewith by viNGN nor the viNGN Network or any component thereof shall be used to provide any service to anyone other than the intended CAI or governmental entity. In addition, Customer shall not connect any equipment or facilities to the viNGN Network or Service for the purpose of providing service to any customer or end user that is not the intended CAI or governmental entity. Further, Customer shall commence its service to CAIs and government entities within ten (10) days of the Start of Service.

5.1.3 Customer shall not, by act of co-mission or omission, do anything that has the effect of constraining, throttling, lessening the capacity, throughput or data speed, or take any action reasonably expected to have a similar effect, of any Service purchased from viNGN pursuant to the Agreement and used in Customer's provision of service to any of its customers or end users..

5.2 No Encumbrances. Customer shall not, through any actions or omissions on its part, cause any part of the viNGN Network to become subject to any lien or become otherwise encumbered, whether by operation of law or otherwise. If Customer becomes aware that it has breached its obligations under this Section, it shall promptly: 1) notify viNGN, in writing, of the lien or other encumbrance; 2) cause the lien or other encumbrance to be discharged and released of record without cost to viNGN and indemnify viNGN against all costs and expenses, including reasonable attorneys' fees and court costs at trial and on appeal, incurred in discharging and releasing the lien or other encumbrance.

5.3 Network Integrity.

5.3.1 Customer may not improperly restrict or interfere with the viNGN Network or use thereof or to engage in any conduct which, by action or inaction, can be reasonably expected to so restrict or interfere with the viNGN Network or use thereof. Upon notice by viNGN, Customer shall promptly cease such conduct and remove any hazard, interference or service obstruction owned by or under the control of Customer. Nothing stated herein shall be construed to permit interference with viNGN's ability to comply with the rules, regulations or directives of any governmental or jurisdictional authority. In the event that Customer improperly restricts or interferes with the viNGN Network or the use thereof, viNGN may, after giving Customer notice and reasonable opportunity to cure, immediately modify, suspend, delay, condition, or cease its obligations under the Agreement in whole or in part until such restriction or interference is cured; provided that if, viNGN, in its sole discretion, determines that the restriction or

interference creates an emergency situation with respect to the operation or use of the viNGN Network, it shall not be required to notify Customer or provide an opportunity to cure before taking any of the actions discussed above.

5.3.2 Customer shall not provide service to Customer's customers and End Users using the viNGN Network in a manner inconsistent or non-conforming with the quality of service (e.g. reliability, capacity, speed, throughput) provided to Customer by viNGN under this MSA. viNGN may require Customer to document in writing the quality of service being provided to Customer's customers where such service uses the viNGN Network or viNGN Services under this MSA. The documentation shall contain sufficient detail to enable viNGN to determine the quality of service being provided by Customer. Customer may not use the viNGN name, trademark or logo in any marketing or other materials to promote or identify its service to customers unless it is providing its customers with the same or better quality of service provided to it by viNGN.

5.4 Emergency Blockage of Service. If viNGN, in its sole discretion, determines that an emergency action is necessary to protect the viNGN Network, personnel or business, viNGN may block any transmission path over the viNGN Network by the Customer, including but not limited to, where transmissions do not meet standard industry requirements. viNGN may also block any transmission utilizing the viNGN Network if viNGN determines in its sole discretion that the transmission violates Applicable Law or viNGN's AUP. The Parties further agree that none of their respective obligations to one another under this Agreement will be affected by any such blockage except that Customer will be relieved of all obligations to make payments for charges relating to such Service on a going forward basis which is so blocked and that no party will have any obligation to the other party for any claim resulting from such blockage. In the event that viNGN takes emergency action pursuant to this section, the blockage of service shall not be deemed a Service Outage and Customer shall not receive any credit for a Service Outage.

5.5 No Unlawful or Unauthorized Use. Customer represents and warrants that it will use viNGN's network in compliance with all Applicable Laws and viNGN's AUP. Customer further represents and warrants that it will employ reasonable commercial efforts to ensure that its customers and end users use viNGN's network in compliance with all Applicable Laws and viNGN's AUP. Customer shall be fully responsible for any actions by its customers that fail to comply with any Applicable Law and viNGN's AUP, and Customer shall promptly take all steps that are necessary to discontinue such actions, to remedy any damages incurred by viNGN as a result of such actions.

5.6 No Resale. Customer shall not resell the Services to any third party who is not a direct End User of Customer's service without the prior written consent of viNGN.

ARTICLE 6 - PERFORMANCE STANDARDS AND SERVICE OUTAGE CREDITS

6.1 Allowance for Interruption of On-Net Service. Customer shall be entitled to a credit for periods of Service Outage that affect On-Net Services under the following circumstances:

6.1.1 On-Net Service Outage in excess of 8 hours: Subject to the provisions of this Article 6 and Section 7.2, viNGN will, upon Customer request, issue a credit, which will be calculated as 1/720th of the MRC billed for the month, for each hour of On-Net Service Outage (two periods of thirty (30) continuous minutes each) in excess of 8 hours during the month. The aggregate of all credits for On-Net Service Outage shall not exceed the MRC for such Service billed during the month.

6.1.2 viNGN will use commercially reasonable efforts to operate Service at 99.999 percent “Availability” throughout the Term. “Availability” is the measure, expressed in percentage, calculated as (“Total Time” minus “On-Net Service Outage Time”) divided by (“Total Time”), with “Total Time” being the number of seconds in a calendar month, and “Service Outage Time” being the time in seconds of any On-Net Service Outage. viNGN’s failure to meet this measure of 99.999 percent “Availability” will not constitute a breach of this Agreement or any part thereof by viNGN or entitle Customer to any Service Outage credit.

6.1.3 viNGN agrees to undertake prompt action to attempt to correct any On-Net Service Outage after receiving notice from Customer that an On-Net Service Outage exists.

6.1.4 A Service Outage begins when the Service is no longer functioning in compliance with the Technical Specifications and Customer opens a trouble ticket with viNGN’s NOC or otherwise notifies viNGN of a Service Outage. Service Outage notifications may be initiated by contacting viNGN’s NOC in writing or by facsimile, courier or any such similar expedited notice mechanism at the numbers and addresses set forth on viNGN’s published service escalation procedures. A Service Outage ends when the affected Service has passed all required testing and is functioning in compliance with the Technical Specifications and viNGN notifies Customer that the Service Outage has ended. In no event shall the credit for a particular Service during a calendar month exceed the monthly MRC for that Service specified in the Service Order.

6.2 Service Outages for Off-Net Services. Notwithstanding anything to the contrary in this Agreement, for Service Outages for Off-Net Services, Customer shall be credited with no more than the credits actually provided to viNGN by the underlying third-party service provider on a pass-through basis, provided such credits are readily identifiable for purposes of credits under this Agreement.

6.3 Events Excepted from Credit. Notwithstanding the foregoing, Customer shall not receive any credit for a Service Outage arising from or caused by the following events:

- a. Customer’s negligence or the negligence of Customer’s customers, End-Users or others Affiliated with Customer;
- b. Failure of electrical power to Customer equipment when power is not provided by viNGN pursuant to this Agreement
- c. Customer rejection of a viNGN request to release the Service for testing and repair;
- d. viNGN’s inability, due to the action or inaction of Customer, Customer’s customer or an End-User, to obtain access required to remedy a defect in Service;
- e. Scheduled maintenance coordinated with Customer and performed by viNGN within the agreed upon time period;
- f. Scheduled upgrade of Service at Customer’s request;
- g. Malfunction of Customer or Customer-provided equipment or systems;
- h. Loss or compromise of Underlying Rights; or

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i. Force Majeure

6.4 Credit Claim Deadline. Customer must submit a written request to claim a credit allowance for a Service Outage within sixty (60) days after delivery of the invoice containing charges for the affected Service. Failure to request an allowance within such period shall constitute a waiver of any claim for a credit.

6.5 Equipment. viNGN may substitute, change or rearrange equipment used in providing Service as long as the quality of Service or type of Service is not impaired or changed. Any special interface equipment or facilities necessary to achieve compatibility, if required because of End-User equipment between equipment of viNGN and facilities of the End-User, shall be at Customer's expense and viNGN shall not be required to provide any such equipment.

ARTICLE 7 - MAINTENANCE AND REPAIR

7.1 Monitoring, Maintenance and Repair. viNGN shall perform monitoring and coordination of all testing, maintenance, and repair functions for On-Net Services twenty-four (24) hours per day, seven days (7) per week. Upon receiving a call from Customer indicating the existence of trouble on the viNGN Network or a system alarm indicating such trouble, viNGN shall initiate efforts to effect appropriate repairs and restore the affected On-Net Service with a target mean time to repair of eight (8) hours. Customer acknowledges and agrees that maintenance and repair of Off-Net Services shall be the responsibility of Customer (if provided by or through Customer) or the appropriate third party provider, and not the responsibility of viNGN. viNGN shall use commercially reasonable efforts to enforce its contractual arrangements with third party providers and induce these providers to perform maintenance and repair as soon as possible and in compliance with industry standards.

7.2 Scheduled System Maintenance. viNGN shall use commercially reasonable efforts to perform scheduled system maintenance of On-Net Services outside of regular business hours, and any such scheduled system maintenance that is likely to disrupt Service shall be scheduled with no less than seven (7) days advance notice to Customer. A Service Outage outside of regular business hours resulting from scheduled system maintenance shall not result in a credit for a Service Outage and shall be completed as soon as practicable. Off-Net Services are subject to interruption for scheduled system maintenance as scheduled by the third party provider.

ARTICLE 8 – TERM AND TERMINATION

8.1 Termination for Cause. Either party may terminate this Agreement for Cause. Cause means a breach by the other party of any material provision of this Agreement, provided that written notice of the breach has been given to the breaching party, and the breach has not been cured within thirty (30) days after delivery of the breach notice, provided that an economic breach of payment obligations by Customer shall be subject to Section 4.2.

8.2 Termination by viNGN.

8.2.1 viNGN may discontinue Service and/or terminate this Agreement and/or any Service Order immediately upon notice to Customer if Customer provides false information to viNGN regarding

the Customer's identity, creditworthiness or planned use of the Services. viNGN may discontinue Service immediately, without notice, if interruption of Service is necessary to prevent or protect against fraud or otherwise protect viNGN's personnel, facilities or services or the integrity or operation of the viNGN Network or otherwise as a result of a violation of Article 5 of this MSA by Customer.

8.2.2 Reserved.

8.3 Suspension of Service; Additional Options.

8.3.1 When payment in full, less any disputed amounts as provided in Article 4.5, is not made by Customer on or before any due date, viNGN, in its sole and absolute discretion, shall have the right, on and after the thirtieth (30th) calendar day after viNGN has given Customer written notice of nonpayment, to suspend any or all Services to Customer (either completely or only with respect to any affected Service Orders) until such time as Customer has paid all amounts due, including any late charges. viNGN's right to suspend Service under this provision is in addition to all of its other remedies available due to Customer's default.

8.3.2 Upon any uncured material breach by Customer or failure by Customer to make payments as due hereunder, viNGN shall have the additional option to immediately: (i) suspend the Services without liability; (ii) terminate the Agreement without liability; (iii) cease accepting or processing orders for the Services; (iv) cease generating usage sensitive information for Customer; (v) enforce any security interest or assurance provided by Customer; and/or (vi) pursue such other appropriate legal or equitable remedy or relief.

8.4 Unlawful Use, Prohibited Use. Customer's use of a Service shall comply with all Applicable Laws. For the avoidance of doubt, Customer shall be responsible for any violation of Applicable Law by itself, its customers and/or its End-Users. In addition to any other remedies available at law or in equity, viNGN may immediately and with or without notice suspend or block access to the Service(s) which are the subject of any violation of the Applicable Laws and/or this Section 8.4, and/or terminate the Services, this Agreement and/or existing Service Orders, if in viNGN's sole discretion, Customers or its End-Users cause a violation that is unlawful or is likely to cause interference with or risk of harm, loss or damage to viNGN or its customers, including, without limitation, any harm to the viNGN Network or viNGN's business. In the event viNGN terminates all or a portion of the Service(s) pursuant to this Section 8.4, then Customer shall pay the amounts set forth in the Service Order for any terminated Service(s). In addition, if Customer uses any Service in a manner that is a violation of Applicable Law or that interferes with the operation of the viNGN Network or its use, and if Customer does not cease such objectionable use immediately after receipt of notice from viNGN, viNGN shall have the right to suspend its provision of Service to Customer until Customer provides assurances reasonably acceptable to viNGN that Customer's use is not in violation of Applicable Law or will no longer interfere with the operation of the viNGN Network or its use.

8.5 Cancellation of Service Order and Early Termination of Service.

8.5.1 Customer may cancel an ASR prior to viNGN's issuance of an associated FOC..

8.5.2 Customer may cancel a Service Order prior to Acceptance of the Service under that Service Order, but Customer shall be obligated to pay to viNGN, within thirty (30) days after invoice, all NRCs associated with such Service.

8.5.3 After Acceptance, Customer may cancel a Service prior to the end of the Service Order Term upon thirty (30) days advance written notice to viNGN, setting forth the proposed effective date of Service termination.

8.5.4 Notwithstanding any limitation of liability set forth in this Agreement, in the event Customer cancels any Service prior to the expiration of the Service Order Term, or viNGN terminates any Service for cause, Customer shall remit to viNGN on demand an early termination fee equal to: (1) the full amount of all past due charges and interest thereon, if any, plus (2) one hundred percent (100%) of all unpaid NRCs, plus (3) any early cancellation or termination charges reasonably incurred and paid to any third party by viNGN on behalf of Customer or otherwise in order to provide the Services to Customer and (4) the sum of:

- a) One hundred percent (100%) of the unpaid MRC that would have been incurred for the Service for months 1–12 of the Service Order Term, plus, in the event of Service Order Terms greater than twelve (12) months,
- b) Eighty percent (80%) of the unpaid MRC that would have been incurred for the Service for months 13-24 of the Service Order Term, plus, in the event of Service Order Terms greater than twenty-four (24) months,
- c) Sixty percent (60%) of the unpaid MRC that would have been incurred for the Service for months 25-36 of the Service Order Term, plus, in the event of Service Order Terms greater than thirty-six (36) months,
- d) Forty percent (40%) of the unpaid MRC that would have been incurred for the Service for months 37-48 of the Service Order Term, plus, regardless of the remaining Service Order Term,
- e) Twenty percent (20%) of the unpaid MRC that would have been incurred for the Service for the remaining months of the Service Order Term.

The foregoing shall be viNGN's sole and exclusive remedy in case of early termination of Service by Customer. The Parties agree that the precise damages resulting from an early termination by Customer are difficult to ascertain, and the early termination fees are a reasonable estimate of anticipated actual damages and not a penalty.

8.6 Customer Early Termination Notice. Customer shall submit all requests for early termination of Service to viNGN via email addressed to *disconnect@viNGN.com*. Each early termination request must specify the Customer name, name of person authorizing the early termination, the contact information (name, address, email address and telephone number) of the person authorizing Customer's early termination, the circuit ID number on the Service to which the early termination request applies, service type and requested disconnection date. viNGN shall have no fewer than thirty (30) days from the date of receipt of Customer's early termination notice delivered in accordance with this provision to complete the disconnect. Billing for Service continues and the Customer's obligation to pay continues until actual termination is effected.

8.7 Legal Changes. Upon thirty (30) days prior written notice or such earlier time as may be required by law, either Party shall have the right to terminate any Service Order entered into under this Agreement without further liability to the other party if any material rate or term contained in the Service Order is materially and adversely changed or is found to be unlawful in any such case or the relationship between the Parties is found to be unlawful, in all cases by order of the highest court of competent jurisdiction, or the Federal Communications Commission, or any other federal, state or local government authority of

competent jurisdiction, provided that the Parties have made commercially reasonable efforts to bring the Service Order into compliance.

ARTICLE 9 – REPRESENTATIONS; WARRANTIES; DISCLAIMER

9.1 Existence and Qualifications.

9.1.1 viNGN represents and warrants to Customer that it has the right to provide Customer the Service, and that it is an entity duly organized and in good standing under the laws of its origin, qualified to do business in all jurisdictions relevant to delivery of the Services, and with all requisite power to enter into and perform its obligations under this Agreement.

9.1.2 The Customer represents and warrants that it is an entity duly organized and in good standing under the laws of its origin, qualified to do business in all jurisdictions relevant to its receipt of the Services, with all requisite power to enter into and perform its obligations under this Agreement.

9.2 Compliance with Laws.

9.2.1 viNGN represents and warrants to Customer that (a) all On-Net Services are designed, produced, installed, provided and maintained in compliance with applicable federal, state and local laws and regulatory requirements; and (b) it has obtained or will obtain prior to the Start of Service Date of any Service hereunder and will maintain throughout the Term, all approvals, consents, governmental authorizations, licenses and permits as may be required to enter into this Agreement, provide the Services and for the performance of its obligations hereunder. viNGN shall be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by governmental authorities with respect to the delivery of the On-Net Service by viNGN.

9.2.2 Customer represents and warrants to viNGN that (a) the Content and the use of the Service by Customer and Customer's End-Users will comply with all applicable federal, state and local laws and regulatory requirements; and (b) it has obtained or will obtain prior to the Start of Service Date of any Service hereunder and will maintain throughout the Term, all approvals, consents, governmental authorizations, licenses and permits as may be required to enter into this Agreement, acquire the Services, to use the Services and for the performance of its obligations hereunder. Customer shall be responsible for applying for, obtaining and maintaining all registrations and certifications and making timely payment of all contributions, fees and charges which may be required by governmental authorities with respect to the receipt of the Service from viNGN and/or delivery of the Services to Customer's End-Users.

9.3 Sole Remedy and Disclaimer of Warranties. THE SERVICE OUTAGE CREDIT RIGHTS SPECIFIED IN ARTICLE 6 ABOVE REPRESENT CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A SERVICE OUTAGE, AND UNDER NO CIRCUMSTANCES WILL OUTAGES, INDIVIDUALLY OR IN THE AGGREGATE, BE CONSIDERED A BREACH BY VINGN OF ANY PART OF THE AGREEMENT. EXCEPT AS PROVIDED ABOVE IN ARTICLES 9.1 AND 9.2, VINGN MAKES NO REPRESENTATIONS AND WARRANTIES UNDER THIS AGREEMENT, EITHER EXPRESS, IMPLIED OR STATUTORY, AND VINGN EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 10 - INDEMNIFICATION

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10.1 By Customer. Customer shall indemnify, defend and hold harmless viNGN and its Affiliates, employees, directors, officers, representatives, subcontractors, and agents (“viNGN Indemnified Parties”) from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties and reasonable attorneys’ fees and disbursements (collectively, “Claims”), to the extent any such Claim is asserted by a third party, including but not limited to Customer’s End-Users, against any viNGN Indemnified Party, directly or indirectly, by reason of or resulting from (a) any action or inaction of Customer or its employees or agents that constitutes negligence or intentional misconduct, (b) claims for libel, slander, infringement of copyright or unauthorized use of trademark, logo, trade name or service mark arising out of Customer or Customer’s End-User’s use of the Service; (c) claims for patent infringement arising from Customer’s actions in combining or connecting its own or third party facilities to the viNGN Network; (d) claims for damage to property and/or personal injuries (including death) arising out of the negligence or willful act or omission of Customer; and (e) claims that the actions of Customer, including but not limited to Content, violate any law or regulation.

10.2 By viNGN. viNGN shall indemnify, defend and hold harmless Customer and its Affiliates, employees, directors, officers, representatives, subcontractors and agents (“Customer Indemnified Parties”) from and against all Claims, to the extent any such Claim is asserted by a third party against any Customer Indemnified Party, directly or indirectly, by reason of or resulting from (a) any action or inaction of viNGN or its employees or agents that constitutes gross negligence or intentional misconduct, (b) claims for damages to property and/or personal injuries (including death) arising out of the negligence or willful act or omission of viNGN, and (c) claims that the actions of viNGN violate any law or regulation.

10.3 Procedures. An Indemnified Party seeking indemnification shall notify the Indemnifying Party promptly after becoming aware of the Claim. The Indemnified Party shall provide the Indemnifying Party provide reasonable cooperation (e.g., providing copies of documents or testimony of witnesses) in the defense of the Claim. Any settlement or compromise of a Claim initiated or entered into by an Indemnified Party must receive the prior written consent of the indemnifying Party.

ARTICLE 11 - LIMITATIONS OF LIABILITY

11.1 Exclusive Remedies. VINGN’S ENTIRE LIABILITY, AND CUSTOMER’S EXCLUSIVE REMEDY AGAINST VINGN, FOR ANY DAMAGES CAUSED BY ANY SERVICE OUTAGE, DEFECT OR FAILURE SHALL BE THE SERVICE OUTAGE CREDIT PROVISIONS SET FORTH ABOVE IN ARTICLE 6.

11.2 Limitation of Liability. EITHER PARTY’S TOTAL LIABILITY IN CONNECTION WITH THIS AGREEMENT FOR ANY AND ALL CAUSES OF ACTION AND CLAIMS, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS, SHALL BE LIMITED TO THE LESSER OF: (A) PROVEN DIRECT DAMAGES OR (B) THE AGGREGATE AMOUNT OF PAYMENTS MADE BY CUSTOMER TO VINGN FOR THE AFFECTED SERVICE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE MONTH IN WHICH THE CIRCUMSTANCES GIVING RISE TO THE CLAIM OCCURRED.

11.3 No Consequential or Punitive Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS OR GOODWILL, ARISING IN CONNECTION WITH THIS

AGREEMENT, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

11.4 Technical Limitations. VINGN SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, INTERACTION, CONNECTIVITY, OR INTERCONNECTION PROBLEMS WITH APPLICATIONS OR OTHER SOFTWARE, EQUIPMENT OR OTHER HARDWARE, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR FOR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S, END-USERS' OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, EQUIPMENT, NETWORK OR SYSTEMS; OR FOR SERVICE DEFECTS OF ANY KIND.

11.5 Force Majeure. Neither Party nor any of their Affiliates shall be liable to the other Party for any loss or damage which may be suffered by reason of any Force Majeure Event.

11.6 Compliance with Law. Neither Party shall be liable to the other Party for any loss or damage which may be suffered by such Party as a result of, related to, or in connection with, the other Party's compliance or non-compliance with any applicable state, federal, foreign governmental, international (foreign or domestic) or other law related to the transfer of the Service, or the use of, the Service.

11.7 Interruptions. Neither viNGN nor any of its officers, directors, or employees shall be liable to the Customer, its Affiliates, subsidiaries, or customers in any way for interruptions, breakdowns, delays, failures in performance, loss and/or damage due to any causes whatsoever, regardless of the length of time for such interruption, breakdown, delay and/or failure in performance. The Customer acknowledges that viNGN has not and does not warrant or guarantee the performance of the viNGN Network or any aspect or portion thereof and the Customer agrees that nothing in this Agreement shall be construed as any such warranty or guarantee.

11.8 Remedies. The remedies expressly set forth in this Agreement are Customer's sole and exclusive remedies with respect to, relating to, or arising from, any non-compliance under this Agreement.

11.9 Limitation Of Liability Of Others. Without limiting the generality of the foregoing, Customer acknowledges and agrees that this Agreement accords it no right of recovery for the satisfaction of any cause whatsoever, arising out of or relating to this Agreement, against (a) any supplier of services or equipment to viNGN in connection with the construction, launch, operation, maintenance of the viNGN Network, in any circumstances in which viNGN would be obligated to indemnify the supplier, or (b) any officer, director, employee, agent, partner, or shareholder of (i) viNGN or (ii) any service or equipment provider thereto. JSC

ARTICLE 12 - INSURANCE *THE VIRGIN ISLANDS Government shall be self-insured*

12.1 Insurance. *insured* Within thirty (30) days after the Effective Date, Customer shall procure, and thereafter shall maintain through the term of this Agreement, insurance coverage in the type and amount set forth below. Such coverage shall be obtained on an occurrence basis from carriers having an AM Best Rating Service rating of A- or better and licensed to do business in the State where the Services are to be delivered. Customer shall deliver to viNGN standard form insurance certificates evidencing the foregoing coverage and stating that such coverage shall not be cancelled, non-renewed or materially and adversely modified without at least thirty (30) days written notice to the certificate holder. Customer shall obtain a waiver of rights of subrogation by each insurer in favor of viNGN. Customer shall maintain the following coverages, with viNGN to be included as an additional insured as its interest may appear:

- ~~Commercial general liability insurance, covering claims for bodily injury, death and property damage, including comprehensive form, premises and operations, independent contractors, products and completed operations, personal injury, contractual, and broad form property damage liability coverage, with limits of \$1,000,000 per occurrence and \$2,000,000 aggregated for each annual period, and~~ SC
- ~~Comprehensive automobile liability insurance, covering owned, non-owned, hired and other vehicles, with combined single limits \$1,000,000.~~

The following coverages shall also be maintained:

- ~~Worker's compensation insurance with statutory limits as required by the laws and regulations applicable to the employees who are engaged in the performance of this Agreement; and~~ SC
- ~~Employer's liability insurance, for employee bodily injuries and deaths, with limits of \$500,000 per occurrence.~~

ARTICLE 13 - ASSIGNMENT

13.1 Assigns. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

13.2 Assignment by viNGN. viNGN shall be permitted to assign, transfer or otherwise dispose of any or all of its right, title, interest or obligation hereunder to any person or entity, without the prior written consent of the Customer. viNGN shall give the Customer written notice of any such assignment, transfer or disposition.

13.3 No Assignment by Customer. The Customer shall not be permitted to assign, transfer or otherwise dispose of any or all of its right, title or interest hereunder or delegate any or all of its obligations hereunder to any person or entity, without the prior written consent of viNGN; except that, the Customer shall be permitted to (i) effect a collateral assignment of its respective rights hereunder to one or more lenders to the Customer or its Affiliates for the purpose of financing the purchase of the Services provided under this Agreement and (ii) assign, transfer or otherwise dispose of any or all of its rights hereunder and delegate any or all of its obligations hereunder to any entity controlled by or under the same control as, or controlling the Customer. The Customer shall give viNGN written notice of any such assignment, transfer or other disposition or any such delegation.

13.4 Effect. Any assignment, transfer or other disposition by either Party which is in violation of this Article shall be void and of no force and effect.

ARTICLE 14 - NOTICES

All notices, demands, requests or other communications under this Agreement shall be in writing and either mailed by certified or registered mail, postage prepaid and return receipt requested, sent by express courier or hand delivered, or sent by electronic mail with a hard copy sent by express courier the following Business Day. Notices shall be addressed to each party at the address set forth below, or transmitted to the indicated email address. Each Party may by notice to the other change its address for receipt of notices.

If to viNGN: viNGN, Inc. dba Virgin Islands Next Generation Network
2179 King Cross St. Christiansted
St. Croix VI, 00820
Attn: Tonjia S. Coverdale, Ph.D., MBA
E-mail: tcoverdale@vingn.com

With copies to: Lorin Kleeger, Esq.
Kleeger & Kleeger, PC
40 Strand Street
Christiansted, St. Croix VI 00820
E-mail: lorinkleeger@gmail.com

and

Richard Rubin, Esq.
Winston & Strawn, LLP
1700 K Street NW
Washington, DC 20006
E-Mail: rrubin@winston.com

If to Customer: Director
Bureau of Information Technology
Office of the Governor
E-Mail: _____

With a copy to: _____

E-Mail: _____

Each notice mailed, delivered or transmitted in the manner described above shall be deemed sufficiently sent and received for all purposes at such time as it is delivered to the addressee.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 Limitations of Service; No Third Party Beneficiaries. This Agreement applies only to Services provided by viNGN to Customer. The provision of Services by viNGN as set forth in this Agreement does not constitute a joint undertaking with Customer for the furnishing of any Service or capacity to End Users. This Agreement does not provide and is not intended to provide third parties (including, but not limited to, customers of the Customer, End-Users, or any permitted transferee or direct or indirect user of the Services) with any remedy, claim, liability, reimbursement, cause of action, or any other right. Furthermore, the Customer acknowledges that it is not a third party beneficiary of any agreement entered into by viNGN, including, but not limited to, the contracts for construction and delivery of the viNGN Network or any part thereof, contracts for the maintenance and repair of the viNGN Network or any part thereof, and contracts for the operations of the viNGN Network or any part thereof.

15.2 Underlying Rights and Relocation.

15.2.1 Underlying Rights. All Services are subject and subordinate to the limitations and restrictions of the Underlying Rights, including, but not limited to, rights of access, covenants, conditions,

restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. All Services are further subject and subordinate to the prior right of the grantor of the Underlying Rights to use the right of way for other business activities, including gas or electrical utility operations, railroad operations, telecommunications uses, or any other purposes, and to the prior right of viNGN to use its rights granted under the Underlying Rights. The Services and any rights granted herein are expressly made subject and subordinate to each and every limitation, restriction or reservation affecting the Underlying Rights. Nothing herein shall be construed as to be a representation, warranty or covenant of viNGN's right, title or interest with respect to the right of way or the Underlying Rights. Upon the expiration or other termination of an Underlying Right that is necessary in order to grant, continue or maintain the Services hereunder, viNGN shall use commercially reasonable efforts to renew such Underlying Right or to obtain an alternate right of way.

15.2.2 Relocation. If viNGN is required to relocate any part of the viNGN Network during the term of this Agreement, including any of the facilities used or required in providing the Services, viNGN shall reasonably determine the extent of, the timing of, and methods to be used for such relocation. Relocation pursuant to this Article shall not affect the term of this Agreement or any Service Order Term. Costs associated with a Relocation necessitated by the action or inaction of Customer shall be borne by the Customer in the form of a NRC.

15.3 Filing of Agreement; Private Carriage. viNGN and Customer agree that this Agreement, to the extent it is subject to FCC regulation, is not subject to the filing requirements of section 211(a) of the Communications Act of 1934 (47 U.S.C. 211(a)) as implemented in 47 C.F.R. 43.51. Customer acknowledges and agrees that this Agreement is the product of independent and private negotiation between itself and viNGN and that the provision of the Services hereunder by viNGN is not telecommunications or common carriage.

15.4 Independent Parties. Nothing in this Agreement shall be deemed to create any relationship between viNGN and Customer other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement. Neither of the Parties shall be deemed or construed, by virtue of this Agreement, to be the employee, representative, partner, or joint venturer of any other Party. No Party is authorized, by virtue of this Agreement, to represent another Party for any purpose whatsoever without the prior written consent of the other Party.

15.5 Force Majeure. Except for payment obligations, neither Party shall be liable, nor shall any credit or other remedy be extended, for any failure to fulfill obligations under this Agreement due to causes beyond a Party's reasonable control, including but not limited to: acts of God, flood, extreme weather, fire or other natural calamity, terrorist attack, any law, order, regulation, ordinance, rule, restriction or action of any governmental entity or civil or military authority or changes therein, failure of the Internet, failure of connectivity, networks, data, products or services controlled by any third party, including the providers of communications or network services, material shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders therefor, or lack of or delay in transportation, power or utility failures, cable cuts attributable to third parties unrelated to the Parties hereto, unavailability of Underlying Rights, national emergencies, riots, wars, strikes, lock-outs, work stoppages or other labor difficulties affecting either of the Parties hereto. A Force Majeure event shall not excuse the obligation to make a payment due pursuant to this Agreement, except to the extent that the Force Majeure event physically interferes with and delays delivery of the payment. [Notwithstanding the foregoing, Customer shall be entitled to a billing credit commensurate with such Force Majeure event to the extent such Force Majeure event results in a Service Outage. Such credit shall be on a pro-rata basis based on the MRC for the affected Service. The Party claiming relief under this Article 15.5 shall notify

the other Party in writing of the existence of the event relied on and the cessation or termination of said event, and the Party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay. If due to Force Majeure, the Service was unavailable for more than thirty (30) consecutive days, either Party shall be entitled to terminate this Agreement without penalty with respect to the entire Service.

15.6 Service Marks, Trademarks and Publicity; Non-Disparagement. Neither viNGN nor Customer shall: (a) use any service mark or trademark of the other Party; or (b) refer to the other party in connection with any advertising, promotion, press release or publication unless it obtains the other Party's prior written approval. Customer shall not disparage viNGN or make otherwise false or misleading statements about viNGN, any viNGN Service or the viNGN Network or any early termination or nonrenewal of any part of the Agreement or any termination or suspension of Service, in accordance with the Agreement, by viNGN. Without limiting the generality of the foregoing, Customer shall not blame viNGN for Customer's inadequate broadband capacity in providing service to its customers when the cause of such inadequacy is the Customer's own technical, engineering or network limitations and/or its decision to purchase from viNGN a particular amount of capacity considered inadequate by its customers, or to use less than the amount of capacity purchased from viNGN in providing servicing to its customers. For purposes of this Section, "disparage" shall mean any negative statement, whether written or oral, about viNGN, its officers, directors, employees, contractors, its viNGN Network and/or any viNGN Service or action taken by viNGN pursuant to the Agreement. The Parties agree and acknowledge that this non-disparagement provision is a material term of the Agreement, the absence of which would have resulted in viNGN refusing to enter into the Agreement.

15.7 Confidentiality.

15.7.1 Each Party understands and acknowledges that any data or information, oral or written, treated as confidential that relates to the other's intellectual property, including but not limited to research, development or any other business activities, including any proprietary information, financial information, revenue, forecasts, projections, methods of operating the viNGN Network which is disclosed or otherwise made available to the other Party (collectively, "Confidential Information"), represent valuable information entitled to protection. Confidential Information shall include any documents or material marked Confidential, and shall additionally include but not be limited to the pricing and terms of this Agreement, and any other non-public information relating to the disclosing Party's technology, business affairs, and marketing or sales plans. Commencing on the Effective Date and continuing until the date which is three (3) years after the termination of this Agreement, each Party shall protect as confidential and shall not disclose to any third party, any Confidential Information received from the disclosing Party or otherwise discovered or received by the receiving Party during the term of this Agreement. Each Party shall secure and protect the Confidential Information in a manner consistent with the steps taken to protect its own trade secrets and confidential information, but not less than a reasonable degree of care. The Parties shall use Confidential Information only for the purpose of this Agreement. If a receiving Party is required by any governmental authority or by Applicable Law to disclose any Confidential Information, then such receiving Party shall provide the disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. Upon receipt of written notice of the requirement to disclose Confidential Information, the disclosing Party, at its expense, may then either seek appropriate protective relief in advance of such requirement to prevent all or part of such disclosure or waive the receiving Party's compliance with the requirements of this Section 15.7.1 with respect to all or part of such Confidential Information.

15.7.2 The confidentiality obligations set forth above shall not prohibit disclosure of (i) information previously known to the receiving Party, (ii) information which is or becomes publicly

known through no wrongful act of the receiving Party, (iii) information received from a third party who is not subject to confidentiality obligation or (iv) information required to be disclosed by a governmental agency or court order. The Parties may disclose its Confidential Information to their accountants, lenders, potential lenders, investors, potential investors, legal and financial advisors and consultants as necessary for the performance of their obligations under this Agreement; provided that the disclosing party shall cause such persons to adhere to the confidentiality requirements of this Agreement.

15.8 Dispute Resolution.

15.8.1 The Parties shall endeavor to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this Agreement for a thirty (30)-day period after a Party has notified the other Party in writing of any such disputes, differences or claims.

15.8.2 Failing such amicable settlement of a dispute pursuant to Section 15.8.1 above, viNGN shall, in its reasonable discretion, resolve the dispute. Notwithstanding viNGN's resolution of a dispute, Customer may, within thirty (30) days of having received notice from viNGN of a dispute resolution, pursue the dispute resolution procedures set forth in Section 15.8.4 below. In the event that Customer does not institute such arbitration procedures within the thirty (30) day period, viNGN's resolution of the dispute shall become final and unappealable.

15.8.3 Subject to section 15.8.2 above, either Party may seek to have any controversy or claim arising under, out of or relating to this Agreement or any subsequent amendments to this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally settled pursuant to the dispute resolution procedures set forth in Section 15.8.4 below.

15.8.4 For purposes of Sections 15.8.2 and 15.8.3, resolution shall be by an arbitrator appointed in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA"), as such AAA rules shall be modified from time to time. This agreement to arbitrate shall be specifically enforceable. The arbitration shall be conducted in the English language. The place of the arbitration shall be St. Croix, United States Virgin Islands, U.S.A. The dispute, controversy or claim shall be decided in accordance with the laws of the Territory of the United States Virgin Islands, U.S.A. Each Party shall be finally and conclusively bound by the arbitral award. The arbitrators shall not have the authority to award punitive, consequential or special damages. Each Party shall bear its own expenses, but the Parties shall share equally the fees and expenses of the arbitration tribunal and the AAA.

15.9 Compliance with Laws. Each Party shall comply with all Applicable Laws.

15.10 Governing Law. This Agreement shall be governed by the laws of the Territory of the United States Virgin Islands without regard to its choice of law principles. Each of the Parties hereto hereby submits to the non-exclusive jurisdiction of the United States District Court of the District of the Virgin Islands and of any United States Virgin Islands Court for the purposes of all legal proceedings, including those proceedings relating to the implementation or enforcement of the arbitration process or award. Each of the Parties hereto hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

15.11 No Third Party Beneficiaries. This Agreement does not provide and is not intended to explicitly or implicitly provide third parties (including, but not limited to, End Users, customers of the Customer, any

permitted transferee or Customer of the Capacity or any other permitted user of the Services) with any remedy, claim, liability, reimbursement, cause of action, or any other right or privilege. Furthermore, the Customer acknowledges that it is not a third party beneficiary of any agreement entered into by viNGN, including, but not limited to, the contracts for construction and delivery of the viNGN Network or any part thereof, contracts for the maintenance and repair of the viNGN Network or any part thereof, and operations, administration and customer care agreement.

15.12 Severability. If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event such invalid or unenforceable provision is an essential and material element of this Agreement, the Parties shall promptly negotiate a replacement provision which shall be in accordance with the requirements of Applicable Law and consistent with the intent of the original provision.

15.13 Survival. The terms and provisions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties shall survive the completion of performance and termination of this Agreement, including, without limitation, provisions for indemnification, limitation of liability, confidentiality and the making of any and all payments due hereunder.

15.14 Entire Agreement and Tariffs: This Agreement, including applicable tariffs, constitutes the entire agreement of the Parties, and supersedes any written or oral prior agreements or understandings relating to the subject matter of this Agreement. The contractual relationship between viNGN and customer shall be governed (in the event of any conflict) by the following order of precedence: (a) applicable tariffs, (b) this Master Services Agreement, (c) applicable FOCs; and (d) applicable Service Orders. As between this Master Services Agreement and a Service Exhibit to the Master Services Agreement, the Service Exhibit will take precedence.

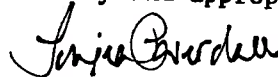
15.15 Headings; Construction: The headings used in this Agreement are for convenience of reference only and are not intended to restrict, affect or influence the interpretation or construction of provisions of such Article or Section or any provisions thereunder. The Appendices attached are incorporated by reference and shall be equally binding upon the Parties.

15.16 Counterparts: This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts shall have been signed by each Party and delivered to the other Party.

The representatives of the Parties warrant and represent that they are duly authorized to act on behalf of the Parties as indicated and the respective entities associated with the Parties as identified in the preface of this MSA and, accordingly hereby execute this MSA.

15.17 Condition Precedent.

This Agreement shall be subject to the availability and appropriation of funds and to the approval of the Governor.



11/18/2015

permitted transferee or Customer of the Capacity or any other permitted user of the Services) with any remedy, claim, liability, reimbursement, cause of action, or any other right or privilege. Furthermore, the Customer acknowledges that it is not a third party beneficiary of any agreement entered into by viNGN, including, but not limited to, the contracts for construction and delivery of the viNGN Network or any part thereof, contracts for the maintenance and repair of the viNGN Network or any part thereof, and operations, administration and customer care agreement.

15.12 Severability. If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event such invalid or unenforceable provision is an essential and material element of this Agreement, the Parties shall promptly negotiate a replacement provision which shall be in accordance with the requirements of Applicable Law and consistent with the intent of the original provision.

15.13 Survival. The terms and provisions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties shall survive the completion of performance and termination of this Agreement, including, without limitation, provisions for indemnification, limitation of liability, confidentiality and the making of any and all payments due hereunder.

15.14 Entire Agreement and Tariffs: This Agreement, including applicable tariffs, constitutes the entire agreement of the Parties, and supersedes any written or oral prior agreements or understandings relating to the subject matter of this Agreement. The contractual relationship between viNGN and customer shall be governed (in the event of any conflict) by the following order of precedence: (a) applicable tariffs, (b) this Master Services Agreement, (c) applicable FOCs; and (d) applicable Service Orders. As between this Master Services Agreement and a Service Exhibit to the Master Services Agreement, the Service Exhibit will take precedence.

15.15 Headings; Construction: The headings used in this Agreement are for convenience of reference only and are not intended to restrict, affect or influence the interpretation or construction of provisions of such Article or Section or any provisions thereunder. The Appendices attached are incorporated by reference and shall be equally binding upon the Parties.

15.16 Counterparts: This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts shall have been signed by each Party and delivered to the other Party.

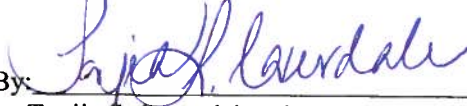
The representatives of the Parties warrant and represent that they are duly authorized to act on behalf of the Parties as indicated and the respective entities associated with the Parties as identified in the preface of this MSA and, accordingly hereby execute this MSA.

15.17 Condition Precedent.

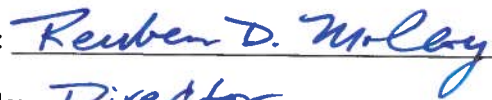
This Agreement shall be subject to the availability and appropriation of funds and to the approval of the Governor.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

viNGN, INC. DBA VIRGIN ISLANDS NEXT
GENERATION NETWORK

By: 
Tonjia S. Coverdale, Ph.D., MBA
President & CEO
DATE: _____

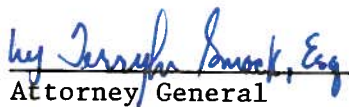
OFFICE OF THE GOVERNOR
BUREAU OF INFORMATION TECHNOLOGY

By: 
Title: Director
DATE: 10/5/2015

Department of Property and Procurement

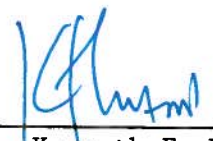
By: 
Title: Commissioner
Date: 2 Dec 15

Approved for legal Sufficiency Virgin Islands Department of Justice:


Attorney General

Date: _____

Approved:


Honorable Kenneth E. Mapp
Governor of the Virgin Islands

Date: 12-16-15